

REMARKS

The present communication responds to the non-final Office Action of December 28, 2005 in which the Examiner rejected claims 1-11, 13-15, 17-20, and 22-31 and objected to claims 12, 16, and 21. Claims 1-11 and 13 were rejected under 35 U.S.C. § 102(e) over Eilersen (U.S. Patent 6,669,090), and claims 14, 15, 17-20, 22 and 25-31 were rejected under 35 U.S.C. § 102(e) over Hjertman et al. (U.S. Patent Application 2002/0032429). Claims 23 and 24 were rejected under 35 U.S.C. § 103(a) over Packman (European Patent Application 1 095 668) as applied to Hjertman et al.

The Examiner's indication that claims 12, 16, and 21 contain allowable subject matter is appreciated, and those claims have been rewritten, without narrowing them, in independent form.

Claims 1, 3, 9, 10, 13-15, 25-27, 29, and 30 have been amended.

Claim 2 has been canceled.

The claim rejections are traversed for at least the reasons articulated below, and reconsideration is requested.

Rejection under 35 U.S.C. § 102

Claims 1-11 and 13 were rejected under 35 U.S.C. § 102(e) over Eilersen (U.S. Patent 6,669,090). (Note: claim 26 is directed towards an ampoule for use with an administering device. Therefore, the discussion below includes reference to claim 26.)

The § 102(e) rejection is traversed at least because Eilersen discloses a medication cartridge wherein, as can be seen at Figs. 1a-1f, information carrying areas 101-120 are situated only on a surface of cartridge 10 that is parallel to axis 11. Therefore, Eilersen fails to disclose the claim 1 recitation of "said distal end [of the ampoule] comprising a surface perpendicular to an axis along said dispensing end and said distal end, said surface comprising at least two recognition elements," and the claim 26 recitation of an ampoule having "at least two recognition elements arranged in one of at least two predetermined positions relative to the ampoule, said at least two positions situated on a surface of said ampoule perpendicular to an

axis of said ampoule.” Because Eilersen fails to disclose each element of claims 1 and 26, the 102(e) rejection should be withdrawn.

Claims 14, 15, 17-20, 22 and 25-31 were rejected under 35 U.S.C. § 102(e) over Hjertman et al. (U.S. Patent Application 2002/0032429). (Note: claim 26 is directed towards an ampoule for use with an administering device, not towards an administering device. Therefore, the discussion below does not include references to claim 26.)

The 102(e) rejection is traversed at least because Hjertman et al. disclose a delivery device and method for its operation wherein, as can be seen at Figs. 1a and 1b, receivers 8, 10, and 11 are situated parallel to an axial direction of cylindrical part 2. Therefore, Hjertman et al. fail to disclose the independent claim recitation of an administering device having “at least two sensors at predetermined positions perpendicular to the axis of said ampoule” for claim 14, an “administering device comprising at least one sensor facing said ampoule plane having said recognition elements” for claim 15, an “administering device comprising at least two sensors at predetermined positions facing said surface of said ampoule” for claim 25, and “[a]n administering device such as an injection or infusion apparatus and an ampoule for use with the administering device, wherein the ampoule comprises at least two associated recognition elements, each of which at least two recognition elements can be arranged on a surface of the ampoule perpendicular to an axis of said ampoule” for claim 29. Because Hjertman et al. fail to disclose each of the elements of claims 14, 15, 25, and 29, the 102(e) rejection should be withdrawn.

Rejection under 35 U.S.C. § 103

Claims 23 and 24 were rejected under 35 U.S.C. § 103(a) over Packman (European Patent Application 1 095 668) as applied to Hjertman et al.

The § 103(a) rejection is traversed because Packman fails to remedy the deficiencies of Hjertman et al. Packman discloses an electronic medication delivery pen having a multifunction actuator that includes sensor 195, and cartridge sensor 190, each coupled to cartridge retainer 18, where the sensors are not situated on a surface perpendicular to a cartridge. From Fig. 7, it can be seen that color code 49 on cartridge is sensed by cartridge sensor 190 via light pipe 192.

From Col. 9, lines 37-48, it can be seen that second cartridge sensor 192 is contemplated for detecting an edge of a cartridge in order to determine the size of the cartridge. Therefore, Packman fails to suggest the element of the independent claims in which recognition elements be disposed on a surface of an ampoule perpendicular to an axis of the ampoule, and the element in which an injection device include one or more sensors facing the surface of the ampoule where recognition elements are disposed. Therefore, withdrawal of the § 103(a) rejection is requested.

Moreover, the asserted combination of Packman and Hjertman et al. to render claim 23 obvious is improper for using impermissible hindsight. This is because one would not look to Packman to discern how to use a multiplexer. The Examiner acknowledges that “Packman does not explicitly state why the multiplexer is used...” Because it is unclear what the multiplexer does in Packman, there is no suggestion or incentive for making the asserted combination. The Office Action fails to point to a teaching in Packman that suggests the modification of Hjertman et al. Therefore, withdrawal of the § 103(a) rejection is requested.

Independent claims

Claims 3-13, 16-24, 26-28, and 30-31 depend from respective independent claims 1, 14, 15, 26 and 29, recite additional features of the present invention and are distinguishable over the prior art for at least the reasons set forth above, as are new claims 32-34.

Conclusion

This communication generates additional claim fees, and a check is enclosed. The Commissioner is also hereby authorized to charge any additional fees or credit any deficiencies associated with this communication to Deposit Account No. 04-1420.

This application now stands in allowable form, and reconsideration and allowance are requested.

Respectfully submitted,

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